Frontier Corporation

frontier

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BY OVERNIGHT MAIL

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: CC Docket No. 96-128

Dear Ms. Salas:

Enclosed please find an original plus four (4) copies of the Comments of Frontier Corporation in the above-docketed proceeding.

To acknowledge receipt, please affix an appropriate notation to the copy of this letter provided herewith for that purpose and return same to the undersigned in the enclosed, self-addressed envelope.

Very truly yours,

Michael J. Shortley, III

cc: Chief, Enforcement Division (2)

International Transcription Service

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Pay Telephone	)	
Reclassification and Compensation	)	**CC Docket No. 96-128**
Provisions of the Telecommunications	)	
Act of 1996	)	

COMMENTS Of
FRONTIER CORPORATION

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Summary

The record compiled to date is clear that a payphone compensation rate in the range that the Commission has previously attempted to establish is simply not sustainable. The market for coin and coinless calls are not comparable. The "deregulated" rate of local coin calls bears no resemblance to the costs of either coin or coinless calls, even if that comparison were appropriate. The Commission should, therefore, abandon its theoretically unsound "market-based" approach, where the interexchange carriers are involuntary participants. To the extent that price and costs converge in a competitive market, the Commission should establish a payphone compensation rate based upon the costs of the most efficient payphone providers.

Finally, if the Commission truly wishes to adopt a market-based solution, it needs to create a market in the first instance by removing interexchange carriers as involuntary middlemen. Only a calling-party-pays solution meets this objective.

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COMMENTS Of FRONTIER CORPORATION

Introduction

Frontier Corporation ("Frontier") submits these comments in response to the Commission's Public Notice.[1] Despite having been informed by the District of Columbia Circuit no less than three times that it has yet to get this one right,[2] the Commission insists on developing a "market-based" surrogate for compensation for coinless calls based upon the deregulated *coin* rate.[3]

Moreover, the record compiled to date is clear that a payphone compensation rate in the range that the Commission has previously attempted to establish is simply not sustainable. The market for coin and coinless calls are not comparable. The "deregulated" rate of local coin calls bears no resemblance

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1 Public Notice, Mimeo 84032, *Pleading Cycle Established for Comment on Remand Issues in the Payphone Proceeding*, DA 98-1198 (July 10, 1998) ("Remand II Notice").

2 *Illinois Public Telecommunications Ass'n v. FCC*, 117 F.3d 555 (D.C. Cir. 1997) ("Payphone I"); *Illinois Public Telecommunications Ass'n v. FCC*, 123 F.3d 694 (D.C. Cir. 1997) ("Payphone II"); *MCI Telecommunications Corp. v. FCC*, No. 97-1675, slip op. (D.C. Cir. May 15, 1998) ("Payphone III").

3 *See* Remand II Notice at 2.

to the costs of either coin or coinless calls, even if that comparison were appropriate. The Commission should, therefore, abandon its theoretically unsound "market-based" approach, where the interexchange carriers are involuntary participants. To the extent that price and costs converge in a competitive market,[4] the Commission should establish a payphone compensation rate based upon the costs of the most efficient payphone providers.

Finally, if the Commission truly wishes to adopt a market-based solution, it needs to create a market in the first instance by removing interexchange carriers as involuntary middlemen. Only a calling-party-pays solution meets this objective.

Argument

I. THE COMMISSION'S MARKET-BASED PAYPHONE COMPENSATION SOLUTION IS UNSOUND.

The Commission's market-based approach rests upon three premises: (a) the local coin market is comparable to the market for dial-around and subscriber 800 calls; (b) the rate for local coin calls approximates the costs of local coin calls; and (c) the costs of dial-around and subscriber 800 calls approximate the costs of local coin calls. None of these premises is true, as the record compiled to date conclusively.

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4 *See* Remand II Notice at 2; Payphone III, slip op. at 7.

A. The Markets for Local Coin and Coinless Payphone Calls -- as Envisioned by the Commission -- Are Not Comparable.

A functioning market is one in which there is a willing seller and a willing buyer.[5] That statement describes the local coin market. There, a buyer -- with knowledge of the price that he or she will incur to complete a transaction -- agrees to the terms of the transaction with the seller, *i.e.,* a caller reads the placard on the payphone, deposits the appropriate coins and makes a telephone call. In that case, a willing buyer and a willing seller consummate a transaction on terms agreeable to both.

As the Commission envisions it, the "market" for dial-around and subscriber 800 calls does not exist. In that "market," the buyer (the payphone user) does not directly pay the supplier (the payphone owner). The Commission has interposed an involuntary middleman -- the interexchange carrier. In this "market," the middleman -- *not* the buyer – pays for the transaction in the first instance. The buyer (payphone user) will not have prior knowledge of the price, if any, of entering into this transaction. Although the user may ultimately foot the bill for the call, in the absence of information regarding the transaction cost, this car hardly be called a market.[6]

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5 *Cf. Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996,* CC Dkt. 96-128, Report and Order, 11 FCC Rcd. 20541, 20549, ¶ 16 (!996) ("Report and Order") (noting that for markets to function properly, consumers must have full information).

6 Even if the buyer has previously been assessed a payphone surcharge and is thus presumably aware of this possibility, the market that the Commission envisions still does not operate. The various midddlemen may pass on the costs that they incur differently or not at all. The information necessary for a market-oriented transaction does not exist *at the time of the transaction.*

The Commission's market-based rationale is flawed in a second, related aspect. In the Commission's market, the willing buyer is, apparently, the interexchange carrier actually handling the call. As has been explained previously and exhaustively, that is a completely inaccurate characterization. The affected interexchange carrier does not initiate the transaction and, in fact, has no feasible way to block individual transactions to which it would otherwise object. The ability of the interexchange carriers selectively to block calls that they do not want is essential for any market-based approach involving interexchange carriers to work. Unfortunately, the Commission has routinely downplayed this fact.[7]

Moreover, had the Commission enforced its coding requirements, this still would not have solved the problem. Even with payphone-specific coding digits available, the previous comments have demonstrated that interexchange carriers cannot selectively block subscriber 800, as opposed to access code, calls. Without this ability, there can be no functioning market because interexchange

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7 *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Dkt, 96-128, Order, DA 97-2162 (Com. Car. Bur. Oct. 7, 1997). This waiver was subsequently extended and clarified in several respects.

This series of waivers was both unnecessary and undermines the market-based approach that the Commission seems insistent upon adopting. It is totally unnecessary -- at least with respect to exchange carrier payphone operations -- because the requirement to transmit payphone-specific coding digits was known at least a year in advance of its required implementation. Despite this, the Commission granted waivers of the requirement *after* the per-call compensation obligation imposed upon interexchange carriers began. What the Commission should have done was to condition the receipt of (or entitlement to) compensation by exchange carriers on fulfillment of this obligation. That being said, the absence of payphone-specific digits undermines the Commission's market-based approach.

carriers are involuntary participants. The first premise necessary to support the Commission's market-based approach is demonstrably incorrect.

B. The Rate for a Local Coin Call Does Not Approximate the Cost of a Local Coin Call.

As the D.C. Circuit recognized, the Commission's market-based approach may make sense if, as in a competitive market, price and cost converge.[8] The Commission has requested comment on this observation.[9]

The record conclusively demonstrates that the local coin rate far exceeds the cost of even a local coin call. The most representative evidence submitted -- regarding Bell Atlantic-Massachusetts and the Sprint telephone companies -- indicate that the cost of a local coin call is around sixteen cents. The data, for example, submitted to the Massachusetts Commission by Bell Atlantic-Massachusetts and introduced into the record by Sprint was used by Bell Atlantic-Massachusetts to justify a twenty-five cent local coin rate.[10] The Sprint data is comparable. Thus, at the deregulated local coin rate of thirty-five cents that prevails in certain places, the cost of a local coin call is more than double its price. This is not a market in which price and cost converge.

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8 Payphone III, slip op. at 7.

9 Remand II Notice at 2.

10 *See, e.g., Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996,* CC Dkt. 96-128, Reply Comments of Frontier Corporation at 9 (Sept. 9, 1997) ("Frontier Reply").

When confronted with this cost evidence, the Commission simply brushed it off as not representative.[11] Rather than rehash all of the arguments here that demonstrate the fallacy of the Commission's reasoning, two brief points bear reiteration. First, because exchange carriers account for approximately eighty percent of the payphones deployed, data relative to exchange carrier payphone operations cannot seriously be classified as unrepresentative.[12] Second, even if the costs of private payphone operators are orders of magnitude higher than those of exchange carriers -- which the Commission apparently believes, but the record does not credibly support -- that fact is essentially irrelevant. The Commission is under no obligation to require the subsidization of the least efficient providers.[13]

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11 *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996,* CC Dkt. 96-128, Second Report and Order, 13 FCC Rcd. 1778, 1821 n.267 (1997) ("Second Report and Order").

12 It is noteworthy that the RBOC/GTE/SNET Coalition has had at least two opportunities to produce cost data regarding the payphone operations of its members and has conspicuously declined to do so. The Commission should draw the reasonable inference that the data would have been inimical to the interests of the members of the Coalition as the potential recipients of the lion's share of payphone compensation. Equally important, to the extent that they produce data now, the Commission should view such data with extreme suspicion. At a minimum, the Commission should demand a detailed explanation as to why such data could not have been -- and was not -- produced earlier and it should afford other parties a full and fair opportunity to rebut such data.

13 The Commission's reliance for the contrary conclusion apparently is based upon the precatory language of section 276 encouraging the widespread deployment of payphones. Second Report and Order, 13 FCC Rcd. at 1818, ¶ 93. As Frontier previously explained (Frontier Reply at 12-14), the argument lacks merit.

C. The Costs of Local Coin Calls and the Costs of Access-Code and Subscriber 800 Calls Do Not Converge.

This is also a necessary predicate for the Commission's market-based approach to be justifiable, even theoretically. Again, the record is replete with evidence that the cost of a coinless call is on the order of ten cents per call (compared with sixteen cents for a local coin call).[14] The simple point is whether one believes the figures relied upon by the Commission or presented by interexchange carriers, the costs of the two types of calls are simply not comparable.

That there are joint and common costs between coin and coinless calls[15] does not alter this conclusion. First, as the comments demonstrate, there are certain costs (*e.g.*, local call termination, coin collection and the like) that are not joint and common, but are attributable solely to coin calls. Second, the existence of joint and common costs does not alter the fundamental economics of the payphone business. As the payphone owners have candidly admitted,[16] the decision to deploy a payphone is based upon the profitability of the instrument from coin calls. As such, there is no economic basis to assign any but the incremental costs associated with coinless operations to payphone compensation. This is particularly true where local coin operations have been

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14 *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996,* CC Dkt. 96-128, Comments of Frontier Corporation at 6-9 (Aug. 25, 1997).

15 *See* Remand II Notice at 2.

16 *See* "FCC Order Jump Starts Industry," Phone+, December 1996 at 64-66.

deregulated. The lack of a governmentally imposed price constraint on coin operations makes the type of cost allocation decisions in which the Commission engages in other contexts (*e.g.*, jurisdictional separations and Part 69 allocations) essentially irrelevant. The prospect of an additional windfall from payphone compensation, even if it causes the deployment of additional payphones, provides no basis for the Commission to establish an artificially and unreasonably high payphone compensation rate.

II. THE COMMISSION SHOULD ESTABLISH A COST-BASED PAYPHONE COMPENSATION SYSTEM.

The record is replete with credible and essentially unrefuted evidence that the cost of completing a coinless call is on the order of ten cents per call.[17] It is time for the Commission to jettison its "market-based" approach (at least as it envisions such an approach) and establish a cost-based compensation amount based upon the costs of the most efficient providers. In this regard, two points bear brief mention (as they have already been discussed at length on this record). First, the Commission must eliminate its current "tops-down" approach. As the D.C. Circuit has correctly concluded, this approach compares apples and oranges.[18]

Second, as discussed above,[19] the Commission must correct the serious deficiencies in its bottoms-up analysis, the most serious of which are ignoring

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17 *See supra* at 7.

18 Payphone III, slip op. at 6.

19 *See supra* at 6.

exchange carrier payphone data and relying upon fragmented and essentially irrelevant data from the private payphone industry.

III. IF THE COMMISSION TRULY WISHES TO ADOPT A MARKET-BASED APPROACH, IT SHOULD ADOPT A CALLING-PARTY-PAYS SOLUTION.

A market-based solution assumes a willing seller and a willing buyer.[20] A buyer willing to place coins in the payphone will know at the point of transaction the cost to initiate an access code or subscriber 800 call. The buyer can decide -- then and there -- whether to agree to the terms of the transaction.

Although the D.C. Circuit previously affirmed the Commission's rejection of a calling-party-pays approach,[21] it did not foreclose its future reconsideration. It merely held that, on the record before it then, the Commission acted within its discretion in declining to mandate such a system.

Moreover, section 226 of the Act (which pre-dates section 276) does not prohibit the adoption of a calling-party-pays system. That section merely required the Commission to consider the adoption of a compensation system (other than advance payment by consumers) for private payphone owners.[22] Section 276, which subsumes section 226(e)(2), contains no similar limitation on the form of the payphone compensation mechanism. Moreover, even if 226(e)(2) retains any continuing vitality, the limitation on advance payment by consumers does not preclude a calling-party-pays system. That section, by its

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[20] *See supra* at 3 n.5.

[21] Payphone I, 1997 U.S. App. LEXIS 16147 at 33-37.

[22] 47 U.S.C. § 226(e)(2).

terms, only appears to prohibit advance payments, not payments made simultaneously with the transaction (*i.e.,* depositing coins in a pay telephone).

Conclusion

For the foregoing reasons, the Commission should act on remand in the manner suggested herein by either: (a) adopting a cost-based payphone compensation rate on the order of ten cents per call; or (b) adopting a calling-party-pays system.

Respectfully submitted,

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